No. 86-80

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

THE PEOPLE OF THE STATE OF NEW YORK,

Petitioner,

—against—

JOSEPH BURGER,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF NEW YORK

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether the fourth amendment of the United States Constitution disables the State from conducting an otherwise valid warrantless administrative inspection of commercial premises in a pervasively regulated industry, pursuant to section 415-a of the New York Vehicle and Traffic Law and section 436 of the New York City Charter, merely because the violations that the inspection is designed to uncover for administrative purposes also constitute evidence of crimes.

LIST OF PARTIES

The petitioner is the State of New York, represented in this criminal prosecution by Kings County District Attorney Elizabeth Holtzman. The respondent is Joseph Burger.

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OPINIONS BELOW

The opinion of the New York Court of Appeals (Pet. App., pp. 1a-8a) is reported at 67 N.Y.2d 338, 493 N.E.2d 926, 502 N.Y.S.2d 702 (1986). The opinion of the Appellate Division (Pet. App., pp. 9a-10a) is reported at 112 A.D.2d 1046, 493 N.Y.S.2d 34 (2d Dep't 1985). The opinion of the trial court following reargument (Pet. App., pp. 11a-17a) is reported at 125 Misc.2d 709, 479 N.Y.S.2d 936 (Sup. Ct. Kings County 1984). The original opinion of the trial court (Pet. App., pp. 18a-19a) is not reported.

JURISDICTION

The judgment of the New York Court of Appeals (Pet. App., pp. 20a-21a) was rendered on May 8, 1986. On June 18, 1986, Justice Marshall extended the time within which to file a petition for a writ of certiorari to and including July 18, 1986. The petition for a writ for certiorari was filed on that date and was granted on October 6, 1986. 107 S. Ct. 61. The jurisdiction of this Court rests upon 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED
(reproduced as an Appendix to this Brief)

1. United States Constitution, Fourth Amendment

2. New York Vehicle and Traffic Law § 415-a

3. New York City Charter § 436

STATEMENT OF THE CASE

The New York State Vehicle and Traffic Law (VTL) § 415-a provides that vehicle dismantlers must be licensed, requires them to maintain records of all vehicles coming into their possession, and authorizes warrantless inspections of their premises during regular business hours for the purpose of examining the records and the vehicles on the premises (App., pp. 1a-10a). The New York City Charter § 436 similarly authorizes warrantless inspections of the records and inventory of all dealers in secondhand merchandise within the city (App., pp. 10a-11a).

In this case defendant Joseph Burger challenged the constitutionality of those statutes by moving to suppress evidence discovered during an inspection of his junkyard made pursuant to the statutes (J.A., pp. 6a-8a). The New York State Supreme

Court denied his motion after a hearing, and adhered to that decision after reargument. Defendant pled guilty to criminal possession of stolen property and appealed the denial of his motion to suppress.[1] The Appellate Division, Second Department, affirmed, upholding the constitutionality of both statutes and rejecting the claim that the officers were using the administrative inspection as a pretext to gather evidence of crime. The New York Court of Appeals reversed, holding that the statutes fail to satisfy the requirements of a valid warrantless administrative inspection scheme, and therefore violate the fourth amendment of the United States Constitution. The State challenges that determination.

The Motion to Suppress Physical Evidence

Two witnesses testified at the hearing on defendant's motion to suppress the evidence discovered during the inspection of his junkyard: Police Officer John Vega, who carried out the inspection with other officers, and defendant Joseph Burger. Their testimony established the following facts.

On November 17, 1982, defendant Joseph Burger was the owner of a junkyard in Brooklyn, New York, where he engaged in the business of dismantling automobiles and selling their parts. The junkyard was an open space containing no buildings, enclosed by a metal fence. At about noon on that date, five plainclothes New York City police officers assigned to the Auto Crimes Division entered defendant's junkyard to conduct a routine warrantless inspection pursuant to VTL § 415-a. The Auto Crimes Division was charged with the enforcement of VTL § 415-a, and in that connection made daily inspections of vehicle dismantlers' yards, typically conducting five to ten inspections a day. The testifying officer did not know any particular reason why defendant's yard was selected for inspection that day, but he knew that the Division

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1 New York law provides that a guilty plea does not waive the right to appeal an order denying a pretrial motion to suppress evidence. N.Y. Crim. Proc. Law § 710.70(2).

had compiled a list of licensed and unlicensed vehicle dismantlers in New York City.

As the officers approached the yard, they saw through the open gate two workers using a torch to dismantle a truck. The officers entered the yard and asked defendant for his license and records. Defendant said he had neither. The officers then announced their intention to inspect the premises pursuant to VTL § 415-a. Defendant replied "Go right ahead."

In the course of their inspection, which took about half an hour, the officers noted the vehicle identification numbers of several automobiles on the premises, and the serial number of a wheelchair that was leaning against a dumpster in the yard. After the officers called in the identification numbers of the cars, and called the rental agency whose name appeared on the wheelchair, they learned that at least two cars, the wheelchair, and a walker also on the premises had been reported stolen. Defendant was arrested and indicted on several counts of criminal possession of stolen property (N.Y. Penal Law §§ 165.40 (misdemeanor), 165.45[1] (felony because value exceeds $250), [3] (felony because defendant is in the business of dealing in property)) and one count of unregistered operation as a vehicle dismantler (VTL § 415-a[1]) (J.A., pp. 3a-5a).

After the suppression hearing, the court rejected defendant's claim that VTL § 415-a(5), which authorized the warrantless inspection, violates the fourth amendment. In a decision dated April 12, 1984, the court denied the motion to suppress the physical evidence seized from defendant's junkyard. The hearing court concluded that the automobile junkyard industry was "pervasively regulated" within the meaning of this Court's decisions in *United States v. Biswell*, 406 U.S. 311 (1972), and *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970), and was therefore a proper subject for a warrantless administrative inspection scheme. The hearing court concluded, in addition, that VTL § 415-a(5) properly limited the

time, place, and scope of the searches it authorized, and thus satisfied constitutional requirements (Pet. App., pp. 18a-19a).

The hearing court granted reargument of defendant's motion in light of the subsequent decision of the Appellate Division in *People v. Pace*, 101 A.D.2d 336, 475 N.Y.S.2d 443 (2d Dep't 1984), *aff'd*, 65 N.Y.2d 684, 481 N.E.2d 250, 491 N.Y.S.2d 618 (1985). *Pace* concerned an analogous local ordinance, New York City Charter § 436, which authorizes warrantless inspections of junkyards and other businesses dealing in secondhand merchandise. In *Pace* the court suppressed evidence obtained as a result of such a search, rejecting the claim that the search was authorized by Charter § 436. The court reached that result by holding that the search at issue was not in fact authorized by Charter § 436 because it was prompted solely by advance suspicion of criminal activity and therefore was not undertaken for administrative purposes.

On reargument in this case, defendant urged the court to apply the *Pace* analysis, but the court distinguished *Pace* on its facts. The hearing court specifically found that in this case, unlike in *Pace*, "when the officers arrived at the defendant's yard, they had no reason to believe that the defendant may be dealing in stolen goods," 125 Misc.2d at 714, 479 N.Y.S.2d at 940 (Pet. App., p. 16a), and therefore the inspection of defendant's yard was conducted for administrative purposes. Thus, the inspection in this case was authorized by New York City Charter § 436 as well as by VTL § 415-a(5). In a decision dated June 11, 1984, the hearing court accordingly adhered to its previous determination and denied defendant's motion to suppress the property seized as a result of the inspection. 125 Misc.2d 709, 479 N.Y.S.2d 936 (Pet. App., pp. 11a-17a).

The Guilty Plea and the Sentence

On June 27, 1984, defendant pled guilty to criminal possession of stolen property in the second degree (N.Y. Penal Law § 165.45[3]),[2] in full satisfaction of the charges contained in the indictment as well as the charges contained in a second indictment charging similar offenses.

On August 15, 1984, the court sentenced defendant as a second felony offender to a term of imprisonment of one and one-half to three years.

The Appeals

The Appellate Division, Second Judicial Department, affirmed the judgment of conviction in an opinion dated August 19, 1985. The Appellate Division, which has factfinding power, N.Y. Crim. Proc. Law § 470.15(1), rejected defendant's claim that the police were merely using the guise of an administrative inspection as a pretext to gather evidence of a crime. The Appellate Division held, rather, that the inspection of defendant's junkyard was properly conducted for administrative purposes in accordance with the provisions of the New York State Vehicle and Traffic Law and the New York City Charter. The court rejected defendant's claim that VTL § 415-a violates the fourth amendment, and upheld the constitutionality of both that statute and New York City Charter § 436. 112 A.D.2d 1046, 493 N.Y.S.2d 34 (Pet. App., pp. 9a-10a).

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2 The Penal Law section under which defendant was convicted provided:

> A person is guilty of criminal possession of stolen property in the second degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when:
>
> . . . .
>
> 3. He is a pawnbroker or is in the business of buying, selling or otherwise dealing in property . . . .

N.Y. Penal Law § 165.45 (McKinney 1975).

The New York Court of Appeals, in an opinion dated May 8, 1986, reversed the order of the Appellate Division and held that both VTL § 415-a(5) and New York City Charter § 436 violate the fourth amendment of the United States Constitution. The Court of Appeals held that these statutes authorize searches "undertaken solely to uncover evidence of criminality and not to enforce a comprehensive regulatory scheme," 67 N.Y.2d at 344, 493 N.E.2d at 929, 502 N.Y.S.2d at 705 (Pet. App., p. 7a) and are for that reason unconstitutional. The court noted that the licensing and record-keeping requirements of VTL § 415-a did suggest an administrative scheme, and held, moreover, that the legislature could properly authorize unannounced warrantless inspections of required books and records. *Id.* at 344, 493 N.E.2d at 929, 502 N.Y.S.2d at 705 (Pet. App., p. 8a). The Court of Appeals nevertheless concluded that VTL § 415-a(5)(a) violates the fourth amendment because it permits searches of vehicles and vehicle parts "notwithstanding the absence of any records against which the findings of such a search could be compared," *id.* at 344-45, 493 N.E.2d at 930, 502 N.Y.S.2d at 706 (Pet. App., p. 8a), and because it authorizes searches by police officers as well as by other regulatory agents, *id.* at 344, 493 N.E.2d at 929, 502 N.Y.S.2d at 705 (Pet. App., p. 7a). The Court of Appeals therefore granted defendant's motion to suppress physical evidence, vacated his guilty plea, dismissed the counts of the indictment charging criminal possession of stolen property, and remitted the case to the trial court for further proceedings. 67 N.Y.2d 338, 493 N.E.2d 926, 502 N.Y.S.2d 702 (Pet. App., pp. 1a-8a).

This Court granted the State's petition for a writ of certiorari to the New York Court of Appeals by an order entered on October 6, 1986.

Defendant remains at liberty on $2,500 bail in this case pursuant to an order of the Chief Judge of the New York Court of Appeals dated October 16, 1985. 66 N.Y.2d 761, 488 N.E.2d 121, 497 N.Y.S.2d 1035. That order continued the bail set by the Supreme Court, Kings County, by an order dated

August 15, 1984, which granted defendant's motion pursuant to N.Y. Crim. Proc. Law § 460.50 for a stay of execution of the judgment pending determination of his appeal to the Appellate Division. Four days before this Court granted the petition for certiorari, defendant was arrested on new charges of criminal possession of stolen property and related charges, arising out of events in September of 1986. He is at liberty on $1000 bail in that case.

SUMMARY OF ARGUMENT

The statutes at issue in this case authorize warrantless inspections of automobile junkyards under circumstances that fall squarely within a well-established exception to the warrant requirement of the fourth amendment. Vehicle dismantling and dealing in secondhand goods constitute pervasively regulated industries with a long history of regulation, and persons who engage in those businesses therefore have the reduced expectation of privacy that is a prerequisite to a valid warrantless inspection scheme. Like dealers in alcoholic beverages, *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970), or firearms, *United States v. Biswell*, 406 U.S. 311 (1972), dealers in parts from dismantled vehicles may be licensed by the State, and as a condition of that license they may be required to keep detailed records of their inventory and to submit to periodic warrantless inspections of both their records and their inventory. Indeed, the dealer in this case had only the most limited expectation of privacy in his premises, because they consisted of an open yard without any buildings, visible through the chain link gate in the fence that surrounded the yard.

The statutes at issue here were enacted as part of a regulatory scheme designed to limit the sale of stolen automobiles and other property, to assist in the tracing of stolen property, and to prevent vehicle dismantlers and dealers in secondhand goods from facilitating the sale of stolen property. Like the statutes in *Colonnade* and *Biswell*, the scheme contains licensing requirements, record-keeping requirements, and civil penal-

ties for failure to comply. It is enforced by frequent and unannounced warrantless inspections, which are necessary for effective enforcement because of the ease with which violations can be concealed. *Compare Donovan v. Dewey*, 452 U.S. 594, 602-03 (1981), *and United States v. Biswell*, 406 U.S. at 316, *with Marshall v. Barlow's, Inc.*, 436 U.S. 307, 316-20 (1978).

In the absence of a warrant requirement, an administrative inspection scheme must provide statutory standards for enforcement that substitute for a warrant in protecting the privacy of persons subject to inspection. *Donovan v. Dewey*, 452 U.S. at 600, 604-05. The statutes at issue here limit the time, place, scope, and purpose of administrative inspections, thereby guiding the discretion of the enforcement officers and providing an adequate substitute for a warrant.

As the courts below found, the inspection in this case was made pursuant to the statutory scheme, and not on the basis of any information or suspicion that it would uncover evidence of crime. While the Court of Appeals recognized this fact, it concluded that the administrative inspection scheme as a whole does not promote an administrative purpose but rather authorizes what is in reality a search for evidence of crime. In reaching this conclusion the Court of Appeals placed great weight on three factors: first, the inspections are carried out by police officers rather than regulatory agents; second, the statutes authorize inspection of inventory even when the business has failed to keep records with which to compare the inventory; and third, the inspections are conducted to discover stolen property, possession of which may be a crime.

None of these factors converts a valid administrative inspection scheme into a search for criminal evidence requiring probable cause and a warrant. Administrative inspections are not the exclusive province of any particular type of officer, nor are administrative inspections of inventory exclusively for the purpose of comparing inventory to records. To the contrary, inventory inspections may also be designed to determine whether a licensee is storing inventory properly, *Colonnade*

Catering Corp. v. United States, 397 U.S. 72 (1970), or whether a licensee is dealing in property that falls outside the terms of the license and is thereby committing a crime, *United States v. Biswell*, 406 U.S. 311 (1972). These are valid administrative concerns, like the concern in this case to prevent vehicle dismantlers and dealers in secondhand goods from dealing in stolen property. The fact that a violation of the regulatory scheme may also be a crime does not invalidate the scheme. It merely requires a hearing court to determine whether any particular inspection was conducted to further the regulatory objective, or whether instead it was solely a search for evidence of crime, for which a warrant and probable cause are required. As there is no dispute on this record that the inspection was conducted to enforce the statutory scheme and not on any suspicion of crime, the inspection and the statutes authorizing it satisfy constitutional standards, and the decision below should be reversed.

ARGUMENT

The inspection in this case falls squarely within a well-established exception to the rule first announced in *See v. City of Seattle*, 387 U.S. 541 (1967), that an administrative inspection of commercial premises ordinarily requires a warrant in order to be reasonable under the fourth amendment. This Court has made clear that warrantless inspections are permitted when three conditions are satisfied.

First, the industry subjected to the warrantless inspection scheme must be one whose members have a reduced expectation of privacy as a result of pervasive regulation, which may include licensing and record-keeping requirements, and civil penalties for noncompliance. Thus this Court has approved warrantless inspections of the records and inventory of dealers in liquor, *Colonnade Catering Corp. v. United States*, 397 U.S. 72, 77 (1970), and firearms, *United States v. Biswell*, 406 U.S. 311, 316 (1972), and warrantless inspections of health and safety conditions in the mining industry, *Donovan v. Dewey*,

452 U.S. 594, 598-600 (1981). By contrast, it has held unconstitutional warrantless inspections of health and safety conditions in all businesses in interstate commerce. *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 313-15 (1978).

Second, the warrantless inspections must be part of a regulatory scheme that is designed to further a strong state interest, and there must be support for the legislative judgment that warrantless inspections are necessary to accomplish the state objective. Thus, this Court has found that the evils associated with the firearms and liquor trades are sufficient to require comprehensive regulation, and that warrantless inspections are necessary to ensure compliance with the regulation of these industries, *United States v. Biswell*, 406 U.S. at 315-16; *Colonnade Catering Corp. v. United States*, 397 U.S. at 76; while warrantless inspections are not necessary to enforce health and safety regulations in all workplaces in interstate commerce. *Marshall v. Barlow's, Inc.*, 436 U.S. at 316-20.

Third, a valid warrantless inspection scheme must limit the time, place, and scope of inspections, and thereby provide an adequate substitute for a warrant in protecting the privacy of proprietors in the regulated businesses. *Donovan v. Dewey*, 452 U.S. at 603; *Marshall v. Barlow's, Inc.*, 436 U.S. at 321. Thus, this Court has found sufficient safeguards in the Federal Gun Control Act of 1968 (18 U.S.C. § 921 *et seq.*), *United States v. Biswell*, 406 U.S. at 315-16, and the Federal Mine Safety and Health Act of 1977 (30 U.S.C. §§ 801 *et seq.*, 811, 813(a)), *Donovan v. Dewey*, 452 U.S. at 603-05; but not in the Occupational Safety and Health Act of 1970 (29 U.S.C. § 657), *Marshall v. Barlow's, Inc.*, 436 U.S. at 322-24.

The statutes at issue in this case plainly satisfy all three requirements of a valid warrantless administrative inspection scheme.[3] The New York Court of Appeals erroneously held

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3 The inspection of defendant's junkyard was independently authorized by both a state statute, VTL § 415-a, and a local ordinance, City Charter § 436. Thus if either one passes constitutional muster, the search must be upheld and the decision below reversed.

that the statutes do not fall within the exception to the warrant requirement because "in reality" they authorize searches for criminal evidence rather than inspections to enforce a regulatory scheme. In support of its conclusion the court pointed to three facts: the statutes authorize police officers rather than administrative agents to conduct the inspections; the statutes authorize searches of inventory in the absence of records against which to compare the inventory; and the statutes authorize searches for stolen property, possession of which constitutes not merely a regulatory violation but also a crime. Contrary to the view of the court below, none of these facts undermines the administrative character of the search.

Point I of this brief argues that vehicle dismantlers and dealers in secondhand goods are pervasively regulated and have the reduced expectation of privacy that is a prerequisite for a valid warrantless inspection scheme. Point II argues that the statutes at issue in this case create a valid regulatory scheme that promotes a strong state interest, and that warrantless inspections are necessary for the effective enforcement of that scheme. Point III argues that the statutes at issue here provide an adequate substitute for a warrant by limiting the time, place, and scope of inspections. Point IV argues that the administrative character of these warrantless inspections is not defeated by the fact that they are conducted by police officers, that they extend to inventory not described in records, and that they are designed to uncover regulatory violations which may also constitute crimes or evidence of crime.

I. VEHICLE DISMANTLERS AND DEALERS IN SECONDHAND GOODS IN NEW YORK ARE ENGAGED IN A PERVASIVELY REGULATED INDUSTRY, AND THEREFORE HAVE THE REDUCED EXPECTATION OF PRIVACY THAT IS A PREREQUISITE TO A VALID WARRANTLESS INSPECTION SCHEME.

The defendant in this case had little legitimate expectation of privacy in his junkyard. First, the expectation of privacy in commercial premises falls far short of that in residential premises. *Donovan v. Dewey*, 452 U.S. at 598-99; *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 353 (1977); *See v. City of Seattle*, 387 U.S. 541, 546 (1967); *cf. Payton v. New York*, 445 U.S. 573 (1980) (paramount fourth amendment privacy interest is in person's home).

Second, defendant's reasonable expectation of privacy in his junkyard was further curtailed by the pervasive regulation of vehicle dismantlers. Extensive governmental regulation and supervision of an industry effectively give notice to proprietors in that industry that they cannot reasonably expect to be accorded the same privacy in their business premises that people involved in other, less-regulated industries enjoy in their business premises. It should hardly surprise those who choose to become firearms dealers, for example, that they will be subjected in their business affairs to more frequent and more intrusive contact with the government, including warrantless inspections, than if they had entered a field in which the government did not have such obvious regulatory interests. *United States v. Biswell*, 406 U.S. at 316. Pervasive regulation of a business thus diminishes the reasonable expectation of privacy of a person engaged in that business. *Donovan v. Dewey*, 452 U.S. at 603-04, 606 (mining industry); *United States v. Biswell*, 406 U.S. at 316 (firearms industry); *Colonnade Catering Corp. v. United States*, 397 U.S. at 77 (liquor industry); *see California v. Carney*, 471 U.S. 386, 392 (1985) ("pervasive schemes of regulation [of vehicles] necessarily lead to reduced expectations of privacy").

Vehicle dismantlers, moreover, are pervasively regulated in New York. Because a vehicle dismantling business involves both acquiring motor vehicles and dismantling them for parts or reselling them as scrap, VTL § 415-a(1), a vehicle dismantling business constitutes a part of the motor vehicle industry, the secondhand goods industry, and the junk industry. *See People v. Cusumano*, 108 A.D.2d 752, 754, 484 N.Y.S.2d 909, 912 (2d Dep't 1985) (junkyard owner was "junkshop keeper" within meaning of New York City Charter § 436); *People v. Tinneny*, 99 Misc.2d 962, 969, 417 N.Y.S.2d 840, 845 (Sup. Ct. 1979) (vehicle dismantlers are part of junk and automobile industries); New York City Admin. Code, ch. 32, tit. B, art. 18, § B32-113.0 (defining "junk dealer" and "junk shop"); *id.* at art. 19, § B32-126.0 (defining "dealer in second-hand articles"). The motor vehicle, secondhand goods, and junk industries are each subject to pervasive governmental regulation in New York, including statutory licensing and record-keeping requirements.[4]

The regulatory schemes now in effect in these industries are, in and of themselves, sufficiently pervasive to diminish a vehicle dismantler's legitimate expectation of privacy. In addition, the long history of regulation in New York of the motor vehicle, secondhand goods, and junk industries further establishes that they are pervasively regulated, and thus have a reduced expectation of privacy. *See Picone v. Commissioner of Licenses*, 241 N.Y. 157, 149 N.E. 336 (1925) (involving regulation by New York City of junk dealers); *People v. Tinneny*, 99 Misc.2d at 969 & n.2, 417 N.Y.S.2d at 845 & n.2 (citing local

4 *See* VTL §§ 415-418 (regulating motor vehicle manufacturers, dealers, repairmen, and dismantlers); N.Y. Comp. Codes R. & Regs. tit. 15, Part 81 (1981) (regulating vehicle dismantlers and other persons engaged in transfer and disposal of junk and salvage vehicles); N.Y. Gen. Bus. Law §§ 60-64 (regulating junk dealers); New York City Charter § 436 (authorizing supervision of junkshop keepers and dealers in secondhand merchandise); New York City Admin. Code, ch. 32, tit. B, art. 18 (regulating junk dealers); *id.* at art. 19 (regulating dealers in secondhand articles). *See generally* N.Y. Town Law § 136(1) (authorizing enactment of local ordinances for licensing and otherwise regulating junk dealers and dealers in secondhand articles).

and city ordinances regulating junk shops for over 140 years); Wise, *The History of the Vehicle and Traffic Law*, McKinney's Cons. Laws of New York, Book 62A, XI, XIII-XIV (1970) (tracing to 1910 statute regulating motor vehicle dealers and manufacturers).

This long history of regulation even more clearly gives notice to those who engage in business as vehicle dismantlers that they cannot reasonably expect the same privacy in their commercial affairs that they would enjoy if they had engaged in other, less-regulated businesses.[5] *See Marshall v. Barlow's, Inc.*, 436 U.S. at 313. Indeed, because the business of vehicle dismantlers is part of three industries that New York has closely regulated as a result of their common susceptibility to trafficking in stolen property, it would be particularly unreasonable for vehicle dismantlers to expect the same privacy accorded to proprietors of less-regulated businesses.

Moreover, New York's statutes are not unusual. Pervasive regulation of defendant's business can be found nationwide. Vehicle dismantlers are subject to extensive regulation and warrantless inspections in at least thirty-three other states,[6] and

5 While a long history of regulation is not a constitutional prerequisite to conducting warrantless administrative inspections in a particular industry, it is a persuasive factor tending to show a reduced expectation of privacy on the part of persons who enter the regulated industry. *Donovan v. Dewey*, 452 U.S. at 605-06.

6 Ariz. Rev. Stat. Ann. § 28-1307(c) (Supp. 1986); Cal. Veh. Code §§ 320(b), 2805 (West Supp. 1986); Conn. Gen. Stat. Ann. § 14-67m(a) (West Supp. 1986); Fla. Stat. Ann. § 812.055 (West Supp. 1986); Ga. Code Ann. § 84-7716 (Harrison 1985); Ill. Ann. Stat. ch. 95 1/2, para. 5-403 (Smith-Hurd Supp. 1986); Ind. Code Ann. §§ 9-1-3.6-10, -12 (1976 & Supp. 1981); Iowa Code Ann. §§ 321.90(3)(b), 321.95 (West 1985); Kan. Stat. Ann. § 8-2408(c) (1982); Ky. Rev. Stat. Ann. § 177.935(a) (Michie/Bobbs-Merrill 1980); La. Rev. Stat. Ann. § 32:757 (West Supp. 1986); Me. Rev. Stat. Ann. tit. 29, § 2459(3) (Supp. 1986); Mich Comp. Laws Ann. §§ 257.13, .251 (West 1977 & Supp. 1986); Miss. Code Ann. § 27-19-313 (1972); Mo. Ann. Stat. § 301-225(2) (Vernon 1987); Mont. Code Ann. § 75-10-503 (1985); Nev. Rev. Stat. § 47.170 (1957); N.H. Rev. Stat. Ann. § 261:132 (1982); N.M. Stat. Ann. § 66-2-12 (1978); Okla. Stat. Ann. tit. 47, § 591.6 (West Supp. 1987); Or. Rev. Stat. § 810.480(2) (1985); R.I.

those statutes have been upheld in most states where the issue has been litigated.[7] Similarly, dealers in secondhand goods are subject to extensive regulation and warrantless inspections in at least seventeen other states and the District of Columbia,[8] and these statutes, too, have consistently been upheld against constitutional attack.[9]

Gen. Laws § 42-14.2-15 (1956 & Supp. 1984); S.C. Code Ann. § 56-5-5670 (Law. Co-op. 1976); S.D. Codified Laws Ann. § 32-6B-39, -40 (Supp. 1986); Tenn. Code Ann. § 55-14-106 (1980); Tex. Rev. Civ. Stat. Ann. art. 6687-2 (Vernon 1986); Utah Code Ann. § 41-3-23 (1953); Vt. Stat. Ann. tit. 23, § 466 (1978); Va. Code Ann. § 46.1-550.12 (1950); Wash. Rev. Code Ann. § 46.79.090 (1987); W. Va. Code § 17A-6-25 (1986); Wis. Stat. Ann. § 218.22 (West 1957); Wyo. Stat. § 31-13-112(e)(iii) (1984).

7 The cases upholding the statutes follow, with discussions of the pervasive regulation of the vehicle dismantling industry at the pages noted. *Bionic Auto Parts and Sales, Inc. v. Fahner*, 721 F.2d 1072, 1079 (7th Cir. 1983); *People v. Easley*, 90 Cal. App.3d 440, 445-46, 153 Cal. Rptr. 396, 399 (Ct. App.), *cert. denied*, 444 U.S. 899 (1979); *Moore v. State*, 442 So.2d 215, 216 (Fla. 1983); *People v. Barnes*, 146 Mich. App. 37, 41-42, 379 N.W.2d 464, 466 (Ct. App. 1985); *see also State v. Tindell*, 272 Ind. 479, 483, 399 N.E.2d 746, 748 (1980) (motor vehicle manufacturers or dealers); *Shirley v. Commonwealth*, 218 Va. 49, 51-52, 57, 235 S.E.2d 432, 433, 436 (1977) (garages or repair shops). *But see People v. Krull*, 107 Ill.2d 107, 481 N.E.2d 703 (1985), *cert. granted*, 106 S. Ct. 1456 (1986); *State v. Galio*, 92 N.M. 266, 587 P.2d 44 (1978).

8 Ark. Stat. Ann. § 71-1501.1 (1979); Colo. Rev. Stat. §§ 18-13-114(1), -117(1) (1986); Del. Code Ann. tit. 24, §§ 2314, 2315 (1981); D.C. Code Ann. § 4-148 (1981); La. Rev. Stat. Ann. 37:1865 (West 1974 & Supp. 1986); Md. Ann. Code art. 56, § 235 (1957); Minn. Stat. Ann. § 609.815 (West Supp. 1977); Mont. Code Ann. § 7-21-4207 (1985); Neb. Rev. Stat. § 69-204 (1981); Nev. Rev. Stat. §§ 647.030, .040 (1957); N.M. Stat Ann. § 57-7-2 (1978); Ohio Rev. Code Ann. § 4737.01 (Anderson 1977 & Supp. 1985); Okla. Stat. Ann. tit. 21, § 1041 (West 1983); Pa. Stat. Ann. tit. 53, § 4432 (Purdon 1972); S.C. Code Ann. § 40-27-10 (Law. Co-op. 1976); Tex. Rev. Civ. Stat. Ann. art. 5069-51.08 (Vernon Supp. 1986); Utah Code Ann. § 76-10-907 (1953); Va. Code Ann. § 54-834 (1950).

9 The cases upholding the statutes follow, with discussions of the pervasive regulation of the secondhand goods industry at the pages noted. *State v. Barnett*, 389 So.2d 352, 356 (La. 1980); *State v. Norman*, 2 Ohio App.3d 159, 165, 441 N.E.2d 292, 299 (Ct. App. 1981); *Kipperman v. State*, 626 S.W.2d 507, 510 (Tex. Crim. App. 1981); *see also Peterman v. Coleman*, 764 F.2d 1416 (11th Cir. 1985) (county ordinance); *State v. Wybierala*, 305 Minn. 455, 459, 235 N.W.2d 197, 199-200 (1975) (city ordinance).

Neither defendant nor the New York Court of Appeals denies that the regulation of vehicle dismantlers is sufficiently pervasive to allow a scheme of warrantless inspections. Defendant has consistently conceded that "a carefully tailored statute" authorizing warrantless inspections of junkyards "would pass constitutional muster." Respondent's Brief in Opposition to Petition for Writ of Certiorari at 3. Likewise the New York Court of Appeals, while objecting to various features of VTL § 415-a and Charter § 436, noted that the legislature could properly require vehicle dismantlers to keep detailed books and records, and authorize warrantless inspections of those books and records. 67 N.Y.2d at 344, 493 N.E.2d at 929, 502 N.Y.S.2d at 705 (Pet. App., p. 8a).

Third, defendant's reasonable expectation of privacy in his junkyard was further diminished because his business premises was nothing more than a bare lot strewn with vehicles and vehicle parts. There were no buildings in the junkyard (Vega: 5, 54-55),[10] and the interior of the yard was readily visible from outside it (Vega: 52-53). Defendant could not reasonably expect much privacy in property that he kept in an exposed lot, and that was largely open to public view.[11] *See Dow Chemical Co.*

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10 Numbers in parentheses refer to pages of the transcript of the hearing on defendant's motion to suppress physical evidence. The numbers are preceded by the name of the witness whose testimony is cited.

11 Indeed, defendant's voluntary consent to the inspection suggests that his actual expectation of privacy in the junkyard was minimal. Defendant never objected to the inspection or otherwise offered any resistance to the police. Rather, he told them to "[g]o right ahead" when they announced that they were going to inspect the yard (Vega: 6, 28, 47). This consent, moreover, was voluntary. *See United States v. Watson*, 423 U.S. 411, 424-25 (1976); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). Defendant was not physically restrained, nor had he yet been informed that he was under arrest, when he told the officers to go ahead with the inspection. In addition, because defendant had

v. United States, 106 S. Ct. 1819, 1825 (1986) (contrasting business's "reasonable, legitimate, and objective expectation of privacy within the interior of its covered buildings" with lack of constitutionally protected privacy interest invaded by aerial surveillance of open areas of premises); *Michigan v. Tyler*, 436 U.S. 499, 504-05 (1978) (privacy protected by fourth amendment "may be sheltered by the walls of a warehouse or other commercial establishment not open to the public" [citations omitted]); *United States v. Santana*, 427 U.S. 38, 42 (1976) (person standing in doorway of dwelling, where she was fully exposed to public view, had no expectation of privacy protected by fourth amendment); *Donovan v. Dewey*, 452 U.S. at 609 (Rehnquist, J., concurring) (fourth amendment protection did not extend to stone quarry that was "largely visible to the naked eye without entrance onto the company's property"); *cf. Oliver v. United States*, 466 U.S. 170, 181 (1984) ("an individual has no legitimate expectation that open fields will remain free from warrantless intrusion by government officers"); *Marshall v. Barlow's, Inc.*, 436 U.S. at 315 ("[w]hat is observable by the public is observable, without a warrant, by the Government inspector as well" [citation omitted]).

II. THE WARRANTLESS INSPECTIONS AUTHORIZED BY THE STATUTES AT ISSUE ARE NECESSARY TO FURTHER THE SUBSTANTIAL STATE INTEREST IN CONTROLLING THEFT OF MOTOR VEHICLES AND OTHER PROPERTY.

The State has a substantial interest in controlling the epidemic of motor vehicle theft and in regulating industries uniquely associated with that problem. The magnitude of the problem of motor vehicle theft in New York is documented by

been in the scrap business for five years and had two prior criminal convictions, his consent was likely a calculated choice. Finally, while refusal to permit an inspection is an offense under both statutes, there is no evidence that defendant even knew this (Vega: 32; Burger: 60-61). Therefore, defendant's consent to the inspection confirms that he in fact had little expectation of privacy in his junkyard.

the Governor's memorandum approving an amendment in 1979 to VTL § 415-a:[12]

> Motor vehicle theft in New York State has been rapidly increasing. It has become a multimillion dollar industry which has resulted in an intolerable economic burden on the citizens of New York. In 1976, over 130,000 automobiles were reported stolen in New York, resulting in losses in excess of $225 million. Because of the high rate of motor vehicle theft, the premiums for comprehensive motor vehicle insurance in New York are significantly above the national average. In addition, stolen automobiles are often used in the commission of other crimes and there is a high incidence of accidents resulting in property damage and bodily injury involving stolen automobiles.

Governor's Memorandum approving L. 1979, chs. 691, 692, 1979 N.Y. Laws 1826, 1826-27. Moreover, motor vehicle theft is a nationwide problem, whose scope is evinced by the number of states that have enacted statutes authorizing warrantless inspections of vehicle dismantling businesses, junkyards, and other businesses involving motor vehicles, and by the judicial decisions upholding those statutes.[13]

12 That amendment added, *inter alia*, express authority for an agent of the Commissioner of Motor Vehicles or a police officer to examine the vehicles and vehicle parts that are subject to the record keeping requirements of the statute, as well as to examine the records themselves. *See* Act of July 13, 1979, ch. 691, § 2, 1979 N.Y. Laws 1336, 1338-39.

13 The statutes are collected at note 6 *supra*. The decisions upholding them, collected at note 7 *supra*, discuss the strong public interest in controlling auto theft and the sale of stolen auto parts at the pages noted below. *See Bionic Auto Parts and Sales, Inc. v. Fahner*, 721 F.2d at 1077 (Ill.); *People v. Easley*, 90 Cal. App.3d at 445, 153 Cal. Rptr. at 399; *Moore v. State*, 442 So.2d at 216 (Fla.); *State v. Tindell*, 272 Ind. at 482-83, 399 N.E.2d at 747-48; *People v. Barnes*, 146 Mich. App. at 42, 379 N.W.2d at 466; *Shirley v. Commonwealth*, 218 Va. at 52, 235 S.E.2d at 434; *see also People v. Krull*, 107 Ill.2d at 116, 481 N.E.2d at 707 (concluding that warrantless administrative searches of junkyards

The State likewise has a substantial interest in controlling theft of property other than motor vehicles, and in regulating junk dealers and secondhand merchandise dealers to prevent them from trafficking in stolen goods. For this reason, many states regulate pawnbrokers, junk dealers, and dealers in secondhand goods, and authorize warrantless inspections of their premises. These statutes have uniformly been upheld against constitutional challenge.[14] This broad legislative and judicial consensus further confirms the reasonableness of New York's administrative inspection scheme. *See United States v. Watson*, 423 U.S. 411, 421-24 (1976) (citing national consensus that warrantless public arrests on probable cause are permissible, and concluding that practice is consistent with fourth amendment).

Moreover, without frequent and unannounced inspections, it would be virtually impossible to prevent vehicle dismantlers from trafficking in stolen vehicles and parts. The statutory scheme of warrantless inspections is designed to deter dismantlers from trafficking in stolen property and to facilitate removal from the industry, through license revocation or suspension, of dismantlers who engage in that activity despite the deterrent effect of the inspections. Because a dismantler's possession of stolen property is a circumstance that may

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are necessary to further adequately the "strong public interest" in preventing theft of automobiles and trafficking in stolen automotive parts, but invalidating statute because it did not adequately limit time, place, and scope of searches). *But see State v. Galio*, 92 N.M. 266, 587 P.2d 44 (1978) (invalidating statute authorizing warrantless inspections of motor vehicle repair shops and related businesses, because legislative policy statement did not show urgent government interest furthered by statute).

14 The statutes are collected at note 8 *supra*. The decisions upholding them, collected at note 9 *supra*, discuss at the pages noted below the strong public interest in preventing secondhand goods dealers from becoming conduits for stolen property. *Peterman v. Coleman*, 764 F.2d at 1416 (county ordinance); *State v. Barnett*, 389 So.2d at 356 (La.); *State v. Wybierala*, 305 Minn. at 459-60, 235 N.W.2d at 199-200 (city ordinance); *State v. Norman*, 2 Ohio App.3d at 165, 441 N.E.2d at 299; *Kipperman v. State*, 626 S.W.2d at 511 (Tex. Crim. App.).

change from day to day, the inspections are most effective if they are conducted frequently. Similarly, because a dismantler can easily rid the premises of any stolen property in anticipation of a particular inspection, the inspections must be unannounced if they are to serve their purpose at all. In light of the need that the inspections be frequent and unannounced, a warrant requirement would simply impede inspections without providing any protection beyond that afforded by a properly limited statute.

Thus this Court in *Donovan v. Dewey*, 452 U.S. at 602-03, upheld a statute authorizing warrantless inspections of mines, because many mine safety or health hazards could be easily concealed if advance warning of inspection were obtained. Similarly, *United States v. Biswell*, 406 U.S. at 316, upheld a statute authorizing warrantless inspections of firearms dealers, because they could easily conceal or correct violations on short notice. Indeed, the Seventh Circuit Court of Appeals, in *Bionic Auto Parts and Sales, Inc. v. Fahner*, 721 F.2d 1072, 1077-78 (7th Cir. 1983), upheld a statute authorizing warrantless inspections of automobile junkyards and related businesses, because such inspections appear critical to the State's need for frequent, impromptu inspections.

Defendant does not dispute the proposition that effective regulation of the vehicle dismantling industry requires a warrantless inspection scheme. Both in the court below and in his response to the petition for certiorari in this Court he has consistently argued only that the statutes at issue here are not sufficiently tailored to the administrative purpose, conceding that a more detailed warrantless inspection statute, such as the one upheld in *Bionic Auto Parts and Sales, Inc. v. Fahner*, would pass constitutional muster. Respondent's Brief in Opposition to Petition for Writ of Certiorari at 3.

Likewise the court below acknowledged that a warrantless inspection scheme would be justified by the State's interest in controlling motor vehicle theft. That court objected to the provisions for warrantless inspections of inventory, but noted

that the Constitution would permit warrantless inspections of required books and records. 67 N.Y.2d at 344, 493 N.E.2d at 929, 502 N.Y.S.2d at 705 (Pet. App., p. 8a).

III. THE STATUTES LIMIT THE TIME, PLACE, AND SCOPE OF WARRANTLESS ADMINISTRATIVE INSPECTIONS, THEREBY PROVIDING AN ADEQUATE SUBSTITUTE FOR A WARRANT.

Defendant's limited expectation of privacy in his junkyard was adequately protected by the statutes that authorized the warrantless inspection. These statutes provide an adequate substitute for a warrant, and thus are constitutional, because the inspections they authorize are "carefully limited in time, place, and scope." *United States v. Biswell*, 406 U.S. at 315.

First, both statutes limit the time of inspections to regular business hours. VTL § 415-a permits inspections only during a vehicle dismantler's "regular and usual business hours." VTL § 415-a(5)(a). While New York City Charter § 436 does not contain its own time limitation on authority to inspect junkshop keepers and dealers in secondhand merchandise, the New York City Administrative Code limits that authority to inspections conducted at "reasonable times," which can fairly be read as regular business hours. New York City Admin. Code, ch. 32, tit. B, art. 18, § B-32-123.0; *id.* at art. 19, § B32-132.0(d); *see People v. Pace*, 111 Misc.2d 488, 491, 444 N.Y.S.2d 529, 531 (Sup. Ct. 1981), *rev'd on other grounds*, 101 A.D.2d 336, 475 N.Y.S.2d 443 (2d Dep't 1984), *aff'd*, 65 N.Y.2d 684, 481 N.E.2d 250, 491 N.Y.S.2d 618 (1985).[15] *See generally St.*

15 The trial court in *People v. Pace* held that provisions of the New York City Administrative Code limit the inspections authorized by Charter § 436 to those conducted at "reasonable times." 111 Misc.2d at 491, 444 N.Y.S.2d at 531. While the New York Court of Appeals in this case held Charter § 436 unconstitutional, it did not rest its decision on any contrary construction of the statute. Therefore, in the absence of any judicial decisions construing Charter § 436 differently, this Court should accept this limiting construction of the statute. *See Kolender v. Lawson*, 461 U.S. 352, 355 & n.4 (1983) (where State Supreme Court had not interpreted state statute, construction of

Martin Evangelical Lutheran Church v. South Dakota, 451 U.S. 772, 780 (1981) (statute should be construed, if such construction is fairly possible, to avoid raising doubts as to its constitutionality); *Eaton v. New York City Conciliation and Appeals Board*, 56 N.Y.2d 340, 346, 437 N.E.2d 1115, 1117, 452 N.Y.S.2d 358, 360 (1982) (statute should be interpreted in such manner as to uphold its constitutionality). It is undisputed, moreover, that defendant's junkyard was open for business when the officers arrived to conduct the inspection at 12:00 noon (Burger: 55-56, 75). Each of the statutes that authorized the inspection of defendant's junkyard thus limited the time of the inspection in exactly the same manner as the statutes upheld in *United States v. Biswell*, 406 U.S. at 312 n.1, and *Bionic Auto Parts and Sales, Inc., v. Fahner*, 721 F.2d at 1080.

Second, both VTL § 415-a and Charter § 436 apply only to industries that are particularly susceptible to trafficking in stolen goods, so both statutes are sufficiently tailored to the goal of combatting that illegal activity. Indeed, VTL § 415-a specifically focuses only on the industry that consists of vehicle dismantlers and closely related businesses, and thus narrowly addresses the particularly pressing problem of motor vehicle theft.[16] Thus VTL § 415-a and Charter § 436 are more like the statute upheld in *Donovan v. Dewey*, 452 U.S. at 600-02, than the statute struck down in *Marshall v. Barlow's, Inc.*, 436 U.S. at 321. The *Dewey* statute, like the statutes at issue in this case, applied only to a single, pervasively regulated industry, while the *Barlow's* statute broadly applied to all businesses with employees in interstate commerce, and failed to tailor inspec-

statute by state intermediate appellate court determined meaning of statute for purpose of vagueness challenge in United States Supreme Court).

16 While New York City Charter § 436 applies to a somewhat broader set of businesses, it is nevertheless limited only to industries susceptible to trafficking in stolen goods. Charter § 436 is therefore adequately tailored to a substantial state goal.

tions to the particular concerns posed by the numerous and varied businesses regulated by the statute.

In addition, both statutes at issue in this case limit the place and the scope of inspections. VTL § 415-a confines inspections of vehicle dismantlers to the records required by the statute and to "any vehicles or parts of vehicles which are subject to the record keeping requirements of this section and which are on the premises." VTL § 415-a(5)(a). New York City Charter § 436 limits inspections of junkshop keepers and dealers in secondhand merchandise to the proprietors, "their clerks and employees and their books, business premises, and any articles of merchandise in their possession." That language, fairly interpreted, authorizes inspections only of records and inventory at business premises, particularly in light of the requirement that a junk dealer keep a record of purchases and sales at the dealer's place of business, New York City Admin. Code, ch. 32, tit. B, art. 18, § B32-123.0. Each of the statutes that authorized the inspection of defendant's junkyard thus carefully limited the place and scope of that inspection in the same manner as the statute upheld in *United States v. Biswell*, 406 U.S. at 312 n.1 (inspections of records required by statute and firearms or ammunition on business premises). *See also United States ex rel. Terraciano v. Montanye*, 493 F.2d 682, 684-85 (2d Cir.), *cert. denied*, 419 U.S. 875 (1974) (upholding statute authorizing warrantless inspection of records on pharmacist's premises, because Constitution permits "an inspection statutorily limited to the business records and goods of industries that are properly subject to intensive regulation in the public interest").

Indeed, the limitations on the time, place, and scope of inspections authorized by the statutes in this case essentially parallel the limitations contained in the warrantless inspection statute upheld by this Court in *United States v. Biswell*, 406 U.S. at 312 n.1. In that case the statute authorized warrantless inspection by a Treasury agent, during business hours, of required records and any firearms or ammunition kept at the premises of a firearms importer, manufacturer, dealer, or

collector. Similarly in this case the statutes authorize warrantless inspection by a police officer or agent of the Commissioner of Motor Vehicles, during regular business hours, of required records and inventory on the premises of a vehicle dismantler (VTL § 415-a) or dealer in secondhand merchandise (Charter § 436).[17]

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17 The statutes upheld by the various state courts that have considered the question are similar in form. *See People v. Easley*, 90 Cal. App.2d at 443, 153 Cal. Rptr. at 398 (inspection [1] by "any peace officer" [2] "during business hours" [3] of "the premises, pertinent records, and vehicles" [4] of licensed automobile dismantler conducting more than one type of business at the establishment); *Moore v. State*, 442 So.2d at 215 (Fla.) (inspection [1] by "[a]ny law enforcement officer" [2] "during normal business hours" [3] "for the purpose of locating stolen vehicles, investigating the titling and registration of vehicles, inspecting vehicles wrecked or dismantled, or inspecting [required] records" [4] of junkyard, motor vehicle salvage yard, or other similar business); *State v. Tindell*, 272 Ind. at 480, 399 N.E.2d at 747 (inspection [1] by "any state police officer or authorized representative of the department" [2] "during reasonable business hours" [3] of "all certificates of origin, certificates of title or proper assignments thereof, and any or all motor vehicles, semitrailers, or recreational vehicles . . . which are held for resale" at place of business [4] of licensed motor vehicle manufacturer or dealer); *State v. Barnett*, 389 So.2d at 353 n.2, 354 (La.) (inspection [1] by "the superintendent of police or sheriff of the parish or anyone designated by them of the city, town or parish in which the secondhand dealer does business" [2] "at all times" [3] of required book containing record of purchase "and the various articles purchased and referred to therein" [4] of secondhand dealer); *People v. Barnes*, 146 Mich. App. at 40, 379 N.W.2d at 465 (inspection [1] by "a police officer or authorized officer or investigator of the secretary of state" [2] "during reasonable or established business hours" [3] of "the record and inventory" [4] of automobile salvage dealer); *State v. Wybierala*, 305 Minn. at 459, 235 N.W.2d at 199 (inspection [1] by "the pawnshop inspector, license inspector or officers of the police force of the City of St. Paul" [2] "at reasonable times" [3, 4] "for the purpose of inspecting such premises [where licensed junk and secondhand dealer is carrying on business] and inspecting the goods, wares and merchandise therein for the purpose of locating goods suspected or alleged to have been stolen or otherwise improperly disposed of"); *Shirley v. Commonwealth*, 218 Va. at 50, 235 S.E.2d at 432-33 (inspection [1] by "[a]ny peace officer or Division [of Motor Vehicles] officer or employee who shall be in uniform or shall exhibit a badge or other sign of authority" [2] without restriction as to time [3, 4] of "any motor vehicle, trailer or semitrailer in any public garage or repair

IV. THE ADMINISTRATIVE CHARACTER OF THIS WARRANTLESS INSPECTION SCHEME IS NOT DEFEATED BY THE FACT THAT INSPECTIONS ARE CONDUCTED BY POLICE OFFICERS, EXTEND TO INVENTORY NOT DESCRIBED IN REQUIRED RECORDS, AND ARE DESIGNED TO UNCOVER STOLEN PROPERTY, WHICH MAY CONSTITUTE EVIDENCE NOT ONLY OF A REGULATORY VIOLATION BUT ALSO OF A CRIME.

The New York Court of Appeals held that VTL § 415-a and Charter § 436 "in reality" authorize searches for evidence of crime, and not inspections to enforce a regulatory scheme. That conclusion is based on a fundamental misconception about the relationship between penal sanctions and administrative regulation. Contrary to the view of the court below, the State is entitled to use both penal sanctions and administrative regulation to attack a major social problem. When it does so, the result is that some evidence obtained pursuant to a valid administrative inspection is relevant to violations of both the penal law and administrative regulation.

New York has chosen to attack the problem of theft of motor vehicles and other property through both its penal law and administrative regulation. The New York Penal Law punishes theft, N.Y. Penal Law art. 155, and knowing possession of stolen property, N.Y. Penal Law §§ 165.40-165.54, no matter who engages in the prohibited conduct. The regulatory

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shop, for the purpose of locating stolen motor vehicles, trailers and semitrailers and for investigating the title and registration of motor vehicles, trailers and semitrailers"). *But see People v. Krull*, 107 Ill.2d at 113, 481 N.E.2d at 706 (invalidating statute authorizing inspection [1] by "the Secretary of State or his authorized representative or any peace officer" [2] "at any reasonable time during the night or day" [3, 4] of required records of automotive parts dealers, scrap processors, and parts recyclers, and of "the premises of the licensee's established place of business for the purpose of determining the accuracy of required records").

schemes at issue here by contrast regulate only dealers in vehicle parts, VTL § 415-a, and in secondhand goods, Charter § 436, and penalize the failure to keep proper records of inventory as well as the inclusion of stolen property in that inventory.

A vehicle dismantler who illegally possesses stolen vehicles or parts is subject to a variety of administrative sanctions under the VTL. The Commissioner of Motor Vehicles may suspend, revoke, or decline to renew the dismantler's license to engage in the business, VTL § 415-a(6)(a), and may also impose civil financial penalties, VTL § 415-a(6)(b). These penalties may be imposed either after conviction or after an administrative hearing. VTL § 415-a(6)(a).

These administrative sanctions are at the heart of the legislative scheme. The legislative purpose in enacting VTL § 415-a was not to enforce the penal law, but rather to force automobile theft rings out of the junkyard business through a system of licensing requirements and inspections, and to make it possible to trace vehicles and parts passing through the junkyards that handle them through a system of required records.

As the New York State Department of Motor Vehicles explained, in its memorandum in support of the enactment of VTL § 415-a in 1973, the purpose of the registration requirement "is to provide a system of record keeping so that vehicles can be traced through junk yards and to assure that such junk yards are run by legitimate business men rather than by auto theft rings." Memorandum of State Dep't of Motor Vehicles in support of L. 1973, ch. 225, 1973 N.Y. Laws 2166, 2167.

Similarly, in a letter to the Governor's Counsel urging him to approve the bill, the Chairman of the State Senate Committee on Transportation wrote:

> This bill establishes much needed safeguards for an industry which can be readily infiltrated by those wishing to dispose of stolen automobiles or automobile parts.

> Although the bill imposes some additional duties on those legitimate dealers in the industry, protection is granted to them by the controls imposed on the source and ownership of the parts they acquire.

Letter of John D. Caemmerer, Chairman of State Senate Comm. on Transp., to Counsel to the Governor (Apr. 12, 1973), *reprinted in* Governor's Bill Jacket, L. 1973, ch. 225.

The administrative character of the statutory scheme was emphasized again at the time of the 1979 amendment, in a letter from the Deputy Commissioner of the State Department of Motor Vehicles to the Governor's Counsel urging him to approve the bill:

> This bill attempts to provide enforcement not only through means of law enforcement but by making it unprofitable for persons to operate in the stolen car field.
>
> The various businesses which are engaged in this operation have been studied and the control and requirements on the businesses have been written in a manner which would permit the persons engaged in the business to legally operate in a manner conducive to good business practices while making it extremely difficult for a person to profitably transfer a stolen vehicle or stolen part. The general scheme is to identify every person who may legitimately be involved in the operation and to provide a record keeping system which will enable junk vehicles and parts to be traced back to the last legitimately registered or titled owner. Legitimate businessmen engaged in this field have complained with good cause that the lack of comprehensive coverage of the field has put them at a disadvantage with persons who currently are able to operate outside of statute and regulations. They have also legitimately complained that delays inherent in the present statutory

> regulation and onerous record keeping requirements have made profitable operation difficult.
>
> The provisions of this bill have been drafted after consultation with respected members of the various industries and provides a more feasible system of controlling traffic in stolen vehicles and parts.

Letter of Stanley M. Gruss, Deputy Comm'r & Counsel to State Dep't of Motor Vehicles, to Counsel to the Governor (June 20, 1979), *reprinted in* Governor's Bill Jacket, L. 1979, ch. 691.

Thus it is clear that the purpose of the statute is not to enforce the penal law but rather to force out of the industry those persons who deal in stolen vehicles or parts. A vehicle dismantler like defendant, who is in possession of stolen property, violates both the administrative scheme and the penal law. That fact does not invalidate the administrative scheme, or the warrantless inspection designed to enforce it.

This Court recognized as much in *United States v. Biswell*, 406 U.S. 311 (1972), which upheld a warrantless inspection of a dealer's inventory aimed at determining whether he was dealing in firearms outside the scope of his license.[18] The firearms found on the dealer's premises constituted evidence of various regulatory violations, and because those violations were criminally punishable, the firearms also constituted evidence of the crimes for which he was prosecuted.[19]

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18 This result was foreshadowed in *See v. City of Seattle*, 387 U.S. 541, 547 (1967), when the Court noted that the Constitution would permit warrantless inspections incidental to "such accepted regulatory techniques as licensing programs." The ALI Model Code of Pre-Arraignment Procedure likewise notes that warrantless inspections are appropriate in the regulation of licensed businesses. *See* Model Code of Pre-Arraignment Procedure § SS 250.5(1) (1975).

19 As this Court noted in *Camara v. Municipal Court*, 387 U.S. 523, 531 (1967), most regulatory laws are enforced by criminal processes, and therefore evidence of a regulatory violation is ordinarily also evidence of crime. *See also In re Grand Jury Subpoena Duces Tecum*, 781 F.2d 64, 67-68 (6th Cir.), *cert. denied*, 107 S. Ct. 64 (1986)

The same can be said of each of the other warrantless administrative inspection schemes upheld by this Court. In *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970), this Court indicated that the Constitution would permit a warrantless inspection of a caterer's locked liquor storeroom, for the purpose of determining whether liquor bottles were being improperly refilled. The administrative character of the inspection was not defeated by the fact that such refilled liquor bottles constitute evidence not only of regulatory violations but also of crimes, *see* 26 U.S.C. §§ 5301(c), 5606. Likewise, the mine inspections upheld in *Donovan v. Dewey*, 452 U.S. 594 (1981), were designed to discover health and safety violations subject to criminal as well as civil sanctions, *see* 30 U.S.C. § 820(d).

So too here the inspection was designed to discover evidence with both administrative and penal law significance. The inspection was designed to discover stolen property on the premises of a licensed vehicle dismantler. Such property is relevant to enforcement of not only the penal law but also the administrative regulation of the vehicle dismantling industry.

The court below took the view that the penal law displaced the administrative regulatory scheme as a matter of constitutional law, but that is simply incorrect. In the view of the court below, a valid administrative scheme could authorize warrantless inspection of books and records, and inspection of inventory for the limited purpose of comparing it with records, but the scheme ceases to be administrative when it authorizes inspection of inventory in the absence of records. 67 N.Y.2d at

(although record-keeping requirement of Motor Vehicle Information and Cost Savings Act facilitated discovery of criminal evidence and thereby facilitated criminal prosecutions for violations of Act, overall purpose of Act was regulatory); *United States v. Gel Spice Co.*, 773 F.2d 427, 432 (2d Cir. 1985), *cert. denied*, 106 S. Ct. 804 (1986) (although evidence gathered during warrantless inspection of defendant's commercial establishment pursuant to Federal Food, Drug, and Cosmetic Act was used in criminal prosecution of defendant for violations of Act, inspection furthered valid administrative scheme whose "main purpose" was to protect health and safety of public).

344-45, 493 N.E.2d at 929-30, 502 N.Y.S.2d at 705-06 (Pet. App., p. 8a). To the contrary, the Constitution does not limit administrative regulation to the enforcement of record-keeping requirements. The administrative inspections approved in *Biswell*, *Colonnade*, and *Dewey* were all aimed at the enforcement of substantive rules of conduct, and not merely of record-keeping requirements. Indeed, in *Biswell*, as here, the defendant apparently failed to maintain required records properly, 406 U.S. at 313 n.2, and nevertheless the agents proceeded to conduct an inspection of the inventory in his locked storeroom, as authorized by statute. Thus it is clear that an administrative inspection of inventory is not limited to determining whether the inventory matches the records.

Such a limitation would have intolerable results. It would bestow on vehicle dismantlers the power to thwart any inspection of inventory simply by refusing to maintain or produce records. A dismantler who refused to maintain or produce records would be subject to administrative sanctions and criminal prosecution for failure to produce records, VTL § 415-a(5)(a), but could avoid the more serious administrative and penal sanctions that would be imposed for illegal possession of stolen property.[20]

In its effort to strip the inspection in this case of its administrative character, the court below also relied in part on

20 Criminal possession of stolen property valued in excess of $3,000 is a class D felony punishable by an indeterminate prison term of up to two and one-third to seven years. N.Y. Penal Law §§ 70.00(1), (2)(d), (3)(b), 165.50. (By an amendment that took effect on November 1, 1986, the statutory threshold of value was changed from $1,500 to $3,000. Act of July 24, 1986, ch. 515, § 6, 1986 N.Y. Laws 1120, 1122.) By contrast, refusing to produce the records that a vehicle dismantler is required to keep is a class A misdemeanor punishable by a maximum determinate prison term of only one year. VTL § 415-a(5)(a); N.Y. Penal Law § 70.15(1)(a).

The Commissioner is empowered to impose the full range of administrative sanctions either for possession of stolen property or for refusal to maintain or produce records, but might well feel constrained to follow the legislative judgment that possession of stolen property is a more serious offense than failure to maintain or produce records.

the fact that the statutes authorize police officers, as well as other regulatory agents, to conduct the inspections. 67 N.Y.2d at 344, 493 N.E.2d at 929, 702 N.Y.S.2d at 705 (Pet. App., p. 7a). That fact, however, cannot have the significance attributed to it by the court below. An otherwise constitutional inspection of commercial premises cannot become unconstitutional merely because it is conducted by police officers instead of other regulatory agents.

Police officers have many responsibilities in addition to the investigation of crimes. Indeed, the New York Court of Appeals recognized in another context that "well over 50% of police work is spent in pursuits unrelated to crime." *People v. DeBour*, 40 N.Y.2d 215, 218, 352 N.E.2d 562, 568, 386 N.Y.S.2d 375, 381 (1976). The ABA Standards for Criminal Justice, citing many studies of police behavior, similarly noted that "the data are sufficient to dispel the myth that police spend most of their time on crime-related matters." ABA Standards for Criminal Justice (Urban Police Function), Standard 1-1.1(b), commentary at 1-15 (2d ed. 1980). The Constitution does not prevent a legislature from including among the responsibilities of police officers the enforcement of a regulatory scheme. The intrusiveness of the inspection does not depend on the uniform of the inspector. As this Court noted in *Michigan v. Tyler*, 436 U.S. 499, 506 (1978), "there is no diminution in a person's reasonable expectation of privacy nor in the protection of the Fourth Amendment simply because the official conducting the search wears the uniform of a firefighter rather than a policeman."

Vehicle dismantlers are subject to both civil and criminal penalties for failing to maintain proper records, and they are subject to both civil and criminal penalties for possession of stolen property. The New York Court of Appeals unaccountably drew a distinction between the two parts of the regulatory scheme, holding that the record-keeping requirement was administrative and subject to enforcement by warrantless inspections, but the ban on dealing in stolen property was not. There is no basis for that distinction.

In sum, the New York Court of Appeals erroneously struck down a valid administrative inspection scheme, on the mistaken premise that because the inspection was designed to discover stolen property, it was necessarily a search "solely to uncover evidence of criminality and not to enforce a comprehensive regulatory scheme." That holding is incorrect and should be reversed by this Court.

CONCLUSION

THE JUDGMENT OF THE COURT OF APPEALS SHOULD BE REVERSED.

Respectfully submitted,

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APPENDIX

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourth Amendment:

> The right of the People to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

New York Vehicle and Traffic Law § 415-a:

> **Vehicle dismantlers and other persons engaged in the transfer or disposal of junk and salvage vehicles**
>
> 1. Definition and registration of vehicle dismantlers. A vehicle dismantler is any person who is engaged in the business of acquiring motor vehicles or trailers for the purpose of dismantling the same for parts or reselling such vehicles as scrap. No person shall engage in the business of or operate as a vehicle dismantler unless there shall have been issued to him a registration in accordance with the provisions of this section. A violation of this subdivision shall be a class E felony.
>
> 1-a. Definition and registration of salvage pools. A salvage pool is any person, acting on behalf of the vehicle owner or an insurance company, who sells, offers for sale or solicits bids for the sale of junk or salvage vehicles or major component parts of such vehicles, or displays or permits the display of such vehicles or parts upon premises owned or controlled by him, but who does not dismantle vehicles. No person shall engage in business as a salvage pool unless there shall have been issued to him a registration in accordance with the provisions of this section. A violation of this subdivision shall be a class A misdemeanor.

1-b. Definition and registration of mobile car crushers. A mobile car crusher is any person who engages in the business of operating a transportable car crusher, but who does not acquire ownership of the vehicles which he crushes. No person shall engage in the business of or operate as a mobile car crusher unless there shall have been issued to him a registration in accordance with the provisions of this section. A violation of this subdivision shall be a class A misdemeanor.

1-c. Itinerant vehicle collectors. An itinerant vehicle collector is any person who is engaged in the business of acquiring non-operable vehicles and who sells such vehicles or major component parts thereof to a vehicle dismantler or scrap processor. No person shall engage in business as an itinerant vehicle collector unless there shall have been issued to him a registration in accordance with the provisions of this section. A violation of this subdivision shall be a class A misdemeanor.

2. Application for registration. An application for registration as a vehicle dismantler, salvage pool, mobile car car crusher or itinerant vehicle collector shall be made to the commissioner on a form prescribed by him which shall contain the name and address of the applicant and the names and addresses of all persons having a financial interest in the business. Such application shall contain a listing of all felony convictions and all other convictions relating to the illegal sale or possession of a motor vehicle or motor vehicle parts, and a listing of all arrests for any such violations by the applicant and any other person required to be named in such application. The application shall also contain the business address of the applicant and may contain any other information required by the commissioner.

3. Fees. The annual fee for registration as a vehicle dismantler, salvage pool, mobile car crusher or itinerant vehicle collector shall be fifty dollars. Upon approval of

an application, an appropriate registration shall be issued for a period of time determined by the commissioner and if issued for a period of more or less than one year, the fee shall be prorated on a monthly basis.

4. Requirements for registration. (a) Except as otherwise provided herein, no registration shall be issued or renewed unless the applicant has a permanent place of business at which the activity requiring registration is performed which conforms to section one hundred thirty-six of the general municipal law as such section applies and to all local laws or ordinances and the applicant and all persons having a financial interest in the business have been determined by the commissioner to be fit persons to engage in such business. However, the commissioner may issue a temporary registration pending final investigation of an application.

(b) The provisions of this subdivision requiring a place of business at which the activity requiring registration is performed shall not apply to a mobile car crusher nor to an itinerant vehicle collector. However, the mobile car crusher or itinerant vehicle collector must otherwise comply with all applicable local licensing laws or ordinances.

(c) Notwithstanding the provisions of paragraph (a) of this subdivision, the commissioner may issue a registration to an applicant for registration as a vehicle dismantler or salvage pool to a person who may not comply with local laws relating to zoning provided that the applicant has engaged in business at that location as a vehicle dismantler since September first, nineteen hundred seventy-three. However, the issuance of such registration shall not be a defense with respect to any action brought with respect to violation of any such local law.

5. Records and identification. (a) Any records required by this section shall apply only to vehicles or parts of vehicles for which a certificate of title has been issued by the commissioner or which would be eligible to have

such a certificate of title issued. Every person required to be registered pursuant to this section shall maintain a record of all motor vehicles, trailers, and major component parts thereof, coming into his possession together with a record of the disposition of any such motor vehicle, trailer or part thereof and shall maintain proof of ownership for any motor vehicle, trailer or major component part thereof while in his possession. Such records shall be maintained in a manner and form prescribed by the commissioner. The commissioner may, by regulation, exempt vehicles or major component parts of vehicles from all or a portion of the record keeping requirements based upon the age of the vehicle if he deems that such record keeping requirements would serve no substantial value. Upon request of an agent of the commissioner or of any police officer and during his regular and usual business hours, a vehicle dismantler shall produce such records and permit said agent or police officer to examine them and any vehicles or parts of vehicles which are subject to the record keeping requirements of this section and which are on the premises. Upon request of any agent of the commissioner and during his regular and usual business hours, a salvage pool, mobile car crusher or itinerant vehicle collector shall produce such records and permit said agent or police officer to examine them and any vehicles or parts of vehicles which are subject to the record keeping requirements of this section and which are on the premises. The failure to produce such records or to permit such inspection on the part of any person required to be registered pursuant to this section as required by this paragraph shall be a class A misdemeanor.

(b) Every vehicle dismantler and salvage pool shall display at his place of business at least one sign upon which his registration number and any other information required by the commissioner is affixed in a manner prescribed by the commissioner and further shall affix his registration number on all advertising, business cards, and

vehicles used by him in connection with his business. The commissioner is hereby empowered to require, by regulation, that vehicle dismantlers and salvage pools mark, stamp or tag major component parts of vehicles in their possession in a manner prescribed by the commissioner so as to enable the part so marked to be identified as having come from a particular vehicle and from a particular vehicle dismantler and salvage pool. A violation of this paragraph shall be a class A misdemeanor.

6. Suspension, revocation and refusal to renew a registration; civil penalty. (a) A registration may be suspended or revoked, or renewal of a registration refused upon a conviction of any provision of the penal law relating to motor vehicle theft, illegal possession of a stolen vehicle or illegal possession of stolen motor vehicle parts, or after the registrant has had an opportunity to be heard upon any change of status of the registrant which would have resulted in refusal to issue a registration, any false statement in an application for a registration, any violation of subdivision five of this section or regulations promulgated by the commissioner with respect to this section, or any violation of title ten of this chapter.

(b) Civil penalty. The commissioner, or any person deputized by him, in addition to or in lieu of revoking or suspending the registration of a registrant in accordance with the provisions of this article, may in any one proceeding by order require the registrant to pay to the people of this state a civil penalty in a sum not exceeding one thousand dollars for each violation and upon the failure of such registrant to pay such penalty within twenty days after the mailing of such order, postage prepaid, registered or certified, and addressed to the last known place of business of such registrant, unless such order is stayed by an order of a court of competent jurisdiction, the commissioner may revoke the registration of such registrant or may suspend the same for such period as he may determine. Civil penalties assessed under

this subdivision shall be paid to the commissioner for deposit into the state treasury, and unpaid civil penalties may be recovered by the commissioner in a civil action in the name of the commissioner.

(c) In addition, as an alternative to such civil action and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county in which the registrant is located a final order of the commissioner containing the amount of the penalty assessed. The filing of such final order shall have the full force and effect of a judgment duly docketed in the the office of such clerk and may be enforced in the same manner and with the same effect as that provided by law in respect to executions issued against property upon judgments of a court of record.

7. Registration as a dealer and as a vehicle dismantler or salvage pool. A person may be registered as a dealer under section four hundred fifteen of this chapter as well as a vehicle dismantler or a salvage pool under this section. However, any such person must obtain a separate registration for each activity and must maintain separate records for each activity.

8. Vehicle rebuilders. (a) A vehicle rebuilder is any person engaged in the business of acquiring damaged vehicles for the purpose of repairing and reselling such vehicles. In order to engage in such business, a person must be registered as a vehicle dismantler pursuant to this section or as a dealer pursuant to section four hundred fifteen of this chapter.

(b) A vehicle rebuilder shall maintain a record of all vehicles or major component parts thereof coming into his possession for the purpose of rebuilding and all major component parts used in connection with such rebuilding in a manner prescribed by the commissioner. Upon request of an agent of the commissioner or any police

officer during his regular and usual business hours, a vehicle rebuilder shall produce such records and permit said agent or police officer to examine them and any vehicles or parts of vehicles which are subject to the record keeping requirements of this section and which are on the premises. The failure to produce such records or to permit such records or to permit such inspection as required by this paragraph shall be a class A misdemeanor.

9. Scrap processor. (a) A scrap processor is any person required to be licensed under article six-C of the general business law who purchases material which is or may have been a vehicle or vehicle part for processing into a form other than a vehicle or vehicle part, but who, except as otherwise provided by regulation of the commissioner, does not sell any such material as a motor vehicle, a trailer or a major component part thereof. No person shall engage in business or operate as a scrap processor as defined in this paragraph unless he has given notice to the commissioner that he is a scrap processor and that he has complied with article six-C of the general business law, and he has been certified by the commissioner as a scrap processor. A violation of this paragraph shall be a class A misdemeanor.

(b) A scrap processor shall maintain a record of vehicles and a record of major component parts by weight coming into his possession thereof in a manner prescribed by the commissioner. This paragraph shall not apply to any major component part included in a mixed load. Upon request of an agent of the commissioner or any police officer or during his regular and usual business hours, a scrap processor shall produce such records and permit such agent or police officer to inspect them and to inspect any vehicles or major component parts of vehicles at the time of the delivery of such vehicles or parts to him. The failure to produce such records or to permit such

inspection as required by this paragraph shall be a class A misdemeanor.

10. Scrap collectors and repair shops. (a) A scrap collector is any person, other than a governmental agency, whose primary business is the collection of miscellaneous scrap for disposal, who may as an incident of such business collect vehicular parts as scrap. No person shall engage in the business or operate as a scrap collector as defined in this paragraph unless he has given notice to the commissioner that he is a scrap collector and has been certified as a scrap collector by the commissioner. A violation of this provision shall be a class A misdemeanor. No person shall be certified as a scrap collector eligible to do business within a city having a population of one million or more, or any county contiguous to such city, unless such person complies with all local requirements applicable to such business.

(b) If required by regulation of the commissioner, a scrap collector shall keep records of his acquisition and disposition of vehicular scrap in a manner prescribed by the commissioner. Upon request of an agent of the commissioner or any police officer, a scrap collector shall produce such records as may be required to be kept and permit said agent or police officer to inspect them during usual business hours or while business is being conducted. The failure to produce such records as required by this paragraph shall be a class A misdemeanor.

(c) A repair shop registered pursuant to article twelve-A of this chapter which disposes of vehicular scrap to a certified scrap processor shall apply to the commissioner for certification to carry out this disposal. The repair shop shall include in the application for certification the names and addresses of those scrap processors with whom it arranges for the disposal of its scrap. Thereafter the repair shop shall give notice to the commissioner within thirty days of any change in the scrap processors with

whom it deals. The failure to comply with this paragraph or to make fraudulent statements regarding the scrap processors with which a repair shop arranges for the disposal of vehicular scrap shall be a class A misdemeanor.

11. Out-of-state businesses. A person doing business in this state who does not have a place of business in this state, but has a place of business or engages in such business in another state or province of Canada and who would be required to be registered or certified pursuant to this section if it were in this state, shall apply to the commissioner for an identification number in a manner prescribed by the commissioner. Such identification number shall be issued provided that such person complies with all the laws and regulations of the jurisdiction in which he has his principal place of business or engages in such business applicable to such business.

12. Identification of certified persons. (a) Every person who is certified or who has been issued an identification number by the commissioner shall display such certification or identification number upon any vehicle used by him for the business of transporting vehicles or parts of vehicles, in accordance with regulations prescribed by the commissioner.

(b) It shall be a class A misdemeanor for any person required to be registered or certified pursuant to the provisions of this section to transport a vehicle or major component parts out of New York state without having and displaying his registration or certification number as provided for in this section.

13. Suspension or revocation of identification number or certification. An identification number and/or certification issued pursuant to subdivision eight, nine, ten or eleven of this section may be suspended or revoked upon conviction of any provision of the penal law relating to motor vehicle theft, illegal possession of a stolen vehicle

or illegal possession of stolen motor vehicle parts. The commissioner may also revoke or suspend registration or certification, after an appropriate hearing where the holder of the registration or certification has had an opportunity to be heard, upon a finding of: (a) that there has been a change to the holder's status which would have resulted in a refusal to issue in the first instance, or (b) that the issuance was based upon a false statement by the holder, or (c) that there was a violation of the record keeping requirements, or (d) that there was a violation of the regulations promulgated by the commissioner pursuant to this section, or (e) that there was a violation of title X of this chapter.

14. Restrictions on scrap processors. A certified scrap processor shall not purchase any material which may have been a vehicle or a major component part of a vehicle, if recognizable as such, from any person other than a dealer registered pursuant to section four hundred fifteen of this chapter, an insurance company, a governmental agency, a person in whose name a certificate of title or other ownership document has been issued for such vehicle or a person registered or certified or issued an identification number pursuant to this section. A violation of this subdivision shall be a class A misdemeanor.

15. Regulations. The commissioner shall prescribe such rules and regulations as he shall deem necessary to carry out the provisions of this section.

New York City Charter § 436:

The commissioner shall possess powers of general supervision and inspection over all licensed or unlicensed pawnbrokers, vendors, junkshop keepers, junk boatmen, cartmen, dealers in second-hand merchandise and auctioneers within the city; and in connection with the performance of any police duties he shall have power to examine such persons, their clerks and employees and

their books, business premises, and any articles of merchandise in their possession. A refusal or neglect to comply in any respect with the provisions of this section on the part of any pawnbroker, vendor, junkshop keeper, junk boatman, cartman, dealer in second-hand merchandise or auctioneer, or any clerk or employee of any thereof shall be triable by a judge of the criminal court and punishable by not more than thirty days' imprisonment, or by a fine of not more than fifty dollars, or both.